

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PROFESSOR LAURA BENY,

Plaintiff,

v.

UNIVERSITY OF MICHIGAN
BOARD OF REGENTS, and DEAN
OF UNIVERSITY OF MICHIGAN
LAW SCHOOL MARK D. WEST, (In
His Individual/Personal Capacity),

Defendants.

Case No. 2:22-cv-12021-DML-EAS

Hon. David M. Lawson,
United States District Judge

Hon. Elizabeth A. Stafford,
Magistrate Judge

**STIPULATED ORDER REGARDING THE PRODUCTION OF
EDUCATION RECORDS**

THIS MATTER having come before the Court by way of the parties' stipulation, and the Court being otherwise advised;

WHEREAS Plaintiff has served discovery requests on Defendants that seek education records regarding third-party students;

WHEREAS, on November 15, 2023, Magistrate Judge Elizabeth A. Stafford entered an Order Granting in Part and Denying in Part Plaintiff's Motion to Compel, which ordered the production of certain student complaints and required the parties to confer about the notice process required for production under the Family

Educational Rights and Privacy Act of 1974 (“FERPA”) and submit a stipulation and proposed order summarizing that process;

WHEREAS the Court has already entered an existing Stipulated Protective Order [ECF No. 63] that provides for treatment of discovery material designated as “Confidential”;

WHEREAS FERPA prohibits the disclosure of the third-party education records absent prior notice or consent;

WHEREAS FERPA and its regulations state that prior consent of a student is not required to disclose information when “such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.” 20 U.S.C. § 1232g(b)(2)(B). *See also* 34 CFR § 99.31(a)(9)(i), (ii).

IT IS HEREBY ORDERED that before producing any education records involving any third-party students, the University of Michigan is required to make reasonable efforts to notify the third-party student so that the third-party student may seek protective action. The University of Michigan may satisfy this obligation to make reasonable efforts to notify the third-party student by sending: (i) a hard-copy notice to the student’s last-known permanent physical address as maintained by the Registrar’s office, and/or (ii) an electronic copy of the notice to the student’s last-

known email address, if the Registrar's office has such email address for the third-party student. The University of Michigan shall not produce any education records unless (a) seven (7) days expires after the University has sent notice to the third-party student in accordance with the preceding sentence or has made other reasonable efforts to notify the third-party student and (b) the third-party student has not filed a notice with the Court objecting to the production of the records.

IT IS FURTHER ORDERED that nothing in this Order compels Defendants to respond to any discovery requests and that nothing in this Order shall act as a waiver on Defendants right to object to all or part of a discovery request as being outside the scope of discovery.

IT IS FURTHER ORDERED that nothing in this Order modifies the Court's November 15, 2023 Order. ECF No. 93.

IT IS SO ORDERED.

Dated: November 21, 2023

s/Elizabeth A. Stafford

ELIZABETH A. STAFFORD

United States Magistrate Judge

STIPULATION

The parties, by and through their respective attorneys, stipulate to the entry of this order.

/s/ Alice B. Jennings (with consent)

Alice B. Jennings (P29064)

Carl R. Edwards (P24952)

EDWARDS & JENNINGS, P.C.

/s/ Brian M. Schwartz

Brian M. Schwartz (P69018)

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